(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.459 of 2001

APPELLANT — Kuldeep s/o Matuk Ram aged about 22 years, occupation-Business, R/o Chhittajhorpodi, P.S. Podi, Tah. Koriya, District-Koriya

Versus

RESPONDENT — State of Chhattisgarh through District Magistrate Koriya

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Appearance:

Shri Awadh Tripathi, counsel for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor for the State.

ORAL JUDGEMENT
(14.05.2007)

SUNIL KUMAR SINHA, J

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 28.3.2001, passed in S.T.No. 50/2000 by the First Additional Sessions Judge, Baikunthpur, District-Koriya(CG), whereby, the said Court convicted the appellant under Section 376 (1) IPC and sentenced him to undergo R.I. for 10 years.

The facts of the case are that on 26.10.1999, at about 7.20 in the night, the prosecutrix namely-Smt.Dewmoon Bai(PW-1), a married lady aged about 28 years and another girl namely-Salko @ Jhanjari(PW-2), aged 13 years, both had gone to answer the call of nature near a place, which is called as *'5 No. Dafai'*. The allegations are that this appellant came over there and caught hold of the prosecutrix and threw her on the ground and thereafter, committed forceful sexual intercourse against her. Salko @ Jhanjari(PW-2) has witnessed the occurrence. Since the husband of the prosecutrix was in jail at that time, she could not lodged the

report immediately and ultimately, the FIR was lodged on 1.11.1999 vide Ex.P/1. Thereafter, the lady was sent for medical examination and Dr. Smt. Kalawati Patel (PW-7) examined her on 1.11.1999 and prepared report Ex.P-6/A. She did not found any injury over the face, lips, cheeks, breasts or stomach. In the internal examination, she found that there was no hymen, and valva and vagina were healthy. However, she could notice one lacerated wound on the back side of left thigh in the size of ½" x ½" and the prosecutrix was also making complaints of pain. According to her report, the prosecutrix was accustomed to sexual intercourse and there were no symptoms of forceful sexual intercourse. After completion of the investigation, charge sheet was filed against the appellant. During the course of trial, the prosecutrix and the aforesaid girl i.e. Smt. Dewmoon Bai and Salko @ Jhanjari were examined as PW-1 and PW-2. The husband of the prosecutrix namely- Laung Sai was also examined as PW-3. The prosecutrix stated that when she had gone to answer the call of nature, the appellant came over there and threw her on the ground, on this, she caught the hand of Salko @ Jhanjari(PW-2), but she could also not save her and the appellant committed forceful sexual intercourse against her. When she tried to make hue and cry, the appellant pressed her neck and threatened her to life. Since her husband was not in the house, she could disclose the story to him after 2nd – 3rd day, when he returned back and thereafter, a report was lodged. She has also stated that the appellant had threatened her for not reporting the matter, saying that if she goes to Police Station, he will get her kidnapped and for this only, she could not make the report earlier and when the husband came to house then only the report was lodged. This evidence of the prosecutrix is supported by the evidence of Salko @ Jhanjari(PW-2) and the same is also corroborated by the evidence of her husband Laung Sai(PW-3). Since the Doctor noticed the injury on the back portion of thigh of the prosecutrix, the trial Court, after appreciation of the evidence of these witnesses, held

the appellant guilty of the offence punishable under Section 376 (1) IPC and sentenced him to undergo R.I. for 10 years.

Learned counsel for the appellant does not press this appeal on merits. He only argues on the sentence. His submission is that in the facts and circumstances of the case, the sentence awarded to the appellant i.e. R.I. for 10 years is too harsh, which should be reduced to the minimum. He also submits that the appellant is in jail since about 6 years and 4 months, therefore, his sentence be reduced to the period already undergone.

On the other hand, learned counsel for the State opposes this prayer.

After going through the facts and circumstances of the case, particularly after going through the evidence of PW-1- Smt. Dewmoon Bai, PW-2-Salko alias Jhanjari and PW-3-Laung Sai, along with the evidence of PW-7-Dr.Smt. Kalawati Patel and further after hearing the arguments of learned counsel for the appellant and the respondent, I do not find any infirmity in the judgment of conviction awarded by the Sessions Court and the conviction of the appellant under Section 376 IPC is awarded by the Sessions Court is hereby confirmed.

Now coming to the question of quantum of punishment, the principle of proportion between crime and punishment is governed by the "*Doctrine of just desert*". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "*just desert*" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same,

though all further subject to the statutory obligations specifically provided by law in force.

In the matter of ***State of Chhattisgarh Vs. Derha, (2004) 9 SCC 699***, rape was committed against a girl aged about 8 years and the accused was aged about 18 years on the date of incident and he had also served about 6 ½ years imprisonment consequent to the sentence imposed on him and was having a family. In such circumstances, the Apex Court vide Para 8 of the judgment, while allowing the appeal of the State and setting aside the judgment of the High Court, reduced the sentence to 7 years R.I.

If we examine the facts of the present case, here, admittedly, the prosecutrix was a married lady, aged about 28 years and for an incident, which took place on 26.10.1999, a report was lodged on 1.11.1999. In consequence thereof, the appellant was taken into custody on 2.11.1999 and thereafter, he remained in jail for 70 days during the pendency of the Sessions Trial and further he is in jail since 28.3.2001 and thereby, he has undergone for about 6 years and 4 months and in the peculiar facts and circumstances of this case, I deem it proper to reduce the jail sentence from 10 years R.I. to 7 years R.I., which would serve the ends of justice being quantum "*just desert*".

In the result, the appeal is partly allowed. The conviction of the appellant under Section 376(1) IPC is confirmed. However, his sentence is reduced from 10 years R.I. to 7 years R.I. The appellant shall be entitled to set off for the period already undergone by him and he shall also be entitled to any legal remission permissible in law for having already served the above sentence of imprisonment.

Sd/-
Sunil Kumar Sinha
Judge

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